

Outline of Judge Cleland's questions for Rule 11 guilty pleas (Rev 9/03)

1. *[The clerk will swear the defendant.]*

2. *[To the defendant:]* You are under oath and required to tell me the truth. If you say something under oath that you know is not true, you can be charged with the crime of perjury and things that you say here could be used against. Do you understand?

3. What is your name?

4. How old are you?

5. What education do you have?

6. Do you read and write English [or: do you understand me so far today]?

7. Are you feeling the effects of any medication, drugs or alcohol that you have consumed in the past few days?

8. Are you being treated by any medical or mental health professional?

9. Do you feel alert, awake and clear-headed today?

☐ *Make a finding of competence*

10. You have the right to have an attorney represent you during all stages of the proceedings. The court appoints an attorney to represent you if you cannot afford to hire an attorney of your own choice. Do you understand that?

11. Have you discussed this case with your attorney?

12. Have you listened to your attorney carefully? Do you understand his/her advice?

13. A plea of guilty is not an attorney's decision. This plea must be your decision. Do you understand?

14. Is this, in fact, your own decision?

15. Do you think a guilty plea is the right decision for you to make in this case?

16. If you plead guilty, you will not have a trial, so for this case you will permanently give up the following rights:

a. You give up the right to enter (or continue) a plea of not guilty and the right to have a jury trial with a lawyer representing you.

b. You give up the right to watch and listen to the witnesses against you and to question those witnesses. You also give up the right to have the court order any witnesses you might have in your own defense to give testimony.

c. You give up the right to testify at trial, and the right to remain silent at trial if you do not want to testify.

d. Do you understand these rights?

17. *[If pleading on an information:]* You have given up your right to be charged through an indictment and agreed to be charged with this crime, is that correct?

☐ *Explain elements of the crime*

18. The maximum penalty for a person who violates this law is _____ years of imprisonment, and a fine of as much as \$_____. *[Also explain any mandatory minimum]* By pleading guilty you are exposing yourself to those possible penalties. Do you understand?

19. If I sentence you to prison, I will also sentence you to a time on "supervised release" after you finish your prison term. If you violate a condition of your supervision, I could send you back to prison for additional time. Do you understand?

20. Your plea of guilty is a result of discussions between the attorney for the government and your attorney. I have not agreed in advance or been part of those plea discussions. Do you understand? The attorneys confirm the court's statement?

21. *[To the AUSA:]* Will you please summarize for the record the important terms of the plea agreement?

22. *[To defense attorney:]* Do you agree with that summary of the guilty plea agreement?

23. Did your client fully understand the agreement before he signed it?

24. Do you believe that this plea is in your client's best interest?

25. *[To the defendant:]* Do you also agree with those statements in the guilty plea agreement?

26. Did your attorney fully explain the agreement to you, and did you have ample time to consider it before you signed it?

27. I am required to impose a "**special assessment**" of \$100 per count. Do you understand?

28. *[In appropriate cases:]* Your agreement to plead guilty also means that you will give up the **right to appeal** anything about your plea or the sentence that you will receive as long I sentence you as the government has recommended. Do you understand?

29. *[In appropriate cases:]* I could also order you to pay **restitution** to any victim of your conduct. Do you understand?

30. *[In appropriate cases:]* I could also order you to **forfeit** certain property associated with your criminal behavior. Do you understand?

31. Any sentence you receive will be governed by the federal Sentencing Guidelines law. I will make the decisions under the sentencing law, and my decisions may be different from the estimated guidelines your lawyer or the government lawyer has predicted. Do you understand?

32. Even though the government recommends a particular sentencing calculation or a specific sentence, my final decision might be different. Do you understand?

33. The Sentencing Guidelines law requires me to consider your crime and decide on a range of sentences. I am normally required to sentence you to not less than the lowest sentence in the range, but not more than the highest. Do you understand?

34. The same sentencing law also says that I do not have to use the Guideline sentence if there are special or unusual conditions that convince me that a Guideline sentence is not proper. In that event, I can "depart" either to a higher or lower sentence. Do you understand?

35. You might disagree with my sentencing calculation, but you have no right to withdraw your guilty plea based only on that disagreement. Do you understand?

36. *[For Rule 11(B)(1)(b) pleas:]* The government has made a recommendation that your sentence should be at a particular level. I do not know if I will or will not follow the recommendation exactly. I will follow it if I think it's proper, but if I do not follow it, you

are not permitted to change your guilty plea. Do you understand? Does Defense counsel confirm that the government has now complied, recommending as agreed?

37. *[For Rule 11(B)(1)(c) pleas – very rarely used:]* The government and you have agreed that there should be a cap on your possible sentence. I do not know if I will follow that agreement or not. The cap in this case is _____. I will follow that sentence cap agreement if I think it's proper, but if I decide it is not a proper limit, then I would reject it and give you the chance to back out of your guilty plea. You could then either withdraw your plea or be sentenced without the cap. Do you understand?

38. *[For 5K1.1 provision pleas:]*

a. You and the government have agreed that you will try to provide valuable information to the government about the criminal behavior of others.

b. The government will then decide whether to ask me to reduce your sentence. They have not yet decided how valuable your assistance is, but they will have to make a good-faith judgment about that before sentencing. And then I will have to decide, independently, whether it is a proper request and how much value your assistance has been. Do you understand?

c. You do not have any guaranteed or promised final sentence based on your cooperation. Do you understand?

39. Has anyone tried to force you or threaten you in any way to get you to plead guilty?

40. Has anyone promised you anything, outside the plea agreement, to convince you to plead guilty?

41. Has anyone done anything you think is improper, illegal or unethical in order to get you to plead guilty?

42. To the charge contained in count ____ of the indictment, "*[name of offense]*," how do you plead: "guilty" or "not guilty"?

☐ *Establish a **factual basis**.*

*(The judge will usually examine the defendant about his/her involvement, but sometimes only the case agent or the attorneys about facts that could be produced at trial. A mere recitation of the elements of the offense by the defendant does not provide a factual basis. **Caution to counsel:** A defendant who dissembles on the facts or falsely minimizes his involvement is acting inconsistently with "acceptance of responsibility.")*

43. *[To the attorneys:]* Are you each satisfied that there is a factual basis? Has the court sufficiently complied with Rule 11?

☐ *Find **voluntariness**.*

44. *[To the defendant:]* If you want me to accept your plea and find you guilty of this offense, I will do that since I believe there is now a proper basis for it. Please tell me now if you want me to accept your guilty plea *[Defendant must then either request acceptance of guilty plea or withdraw]*

☐ *Accept the plea and adjudge guilt*